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STATE FOR EAP/MLS, EEB/IPE FOR JURBAN
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SUBJECT: FOCUSED ON SPECIAL 301: ALONGKORN PROMOTES THAILAND'S INTELLECTUAL PROPERTY AGENDA

REF: A. BANGKOK 2848 (PREPARING FOR LOCKE-ALONGKORN MEETING)
[IB.](#) BANGKOK 2768 (PRIME MINISTER MEETS APCAC)
[IC.](#) BANGKOK 1338 (NEW INTELLECTUAL PROPERTY STRATEGY)
[ID.](#) BANGKOK 1203 (PATPONG RAID)
[IE.](#) BANGKOK 379 (RIGHT MOVES ON IPR)

BANGKOK 00002984 001.2 OF 003

[¶1.](#) (SBU) SUMMARY: In a meeting on November 9, Deputy Commerce Minister Alongkorn Ponlaboot and new Director General of Intellectual Property Pajchima Tanasanti emphasized to emboffs, visiting USTR official Rachel Bae and State Department IP official JoEllen Urban that the Abhisit Administration remains very serious about strengthening the protection and promotion of intellectual property rights through its "Creative Thailand" strategy -- ever hopeful that USTR will seriously consider moving Thailand off of the Special 301 Priority Watch List in 2010. Alongkorn trumpeted Thailand's September 24 accession to the Patent Cooperation Treaty, detailed a set of proposed amendments to the Copyright and Trademark Acts, and signaled the government's intent to implement an anti-camcording law. Alongkorn lamented the challenges he has had with the Ministry of Public Health when discussing IPR but agreed that the government needs to establish a better mechanism to improve its dialogue with the pharmaceutical industry. END SUMMARY.

[¶2.](#) (SBU) COMMENT: The Abhisit government appears to be more committed to IPR protection than any previous Thai Government in recent history, and is laying the foundations for positive long-run changes in Thailand's perception of the importance of IPR. While we applaud Alongkorn's initiative and dedication overall, concerns remain that the RTG may not be taking sufficient concrete steps to respond to complaints by a number of U.S. industry groups. END COMMENT.

Rising Up Through the Ranks

[¶3.](#) (SBU) Deputy Commerce Minister Alongkorn Ponlaboot introduced Pajchima Tanasanti, the new Intellectual Property Director General in a November 9 meeting with Rachel Bae, Director for Intellectual Property and Innovation at the Office of the U.S. Trade Representative. In an unusual personnel shift, Pajchima Tanasanti, who most recently was the Deputy Director General for Enforcement at the Department of Intellectual Property (DIP), was hand-selected by Alongkorn to replace Puangrat Asavapisit, who retired on September 30 after reaching the mandatory retirement age of 60. According to several contacts, Alongkorn strongly pushed for Pajchima's candidacy

as Director General, even though under the Ministry of Commerce traditions a Deputy Director General is rarely promoted to become the Director General of the same department. (NOTE: Deputy Director General Wiboonlasana Ruamraksa, who has been an important contact of the Embassy and USTR during her five year tenure at the Department of Intellectual Property, was recently transferred to the Department of Foreign Trade. Duangporn Rodphaya, formerly a DDG at the Department of Foreign Trade, replaced Wiboonlasana at DIP. END NOTE.)

¶4. (SBU) Foreign and Thai rights holders have indicated that they are pleased with Pajchima's promotion to Director General. Pajchima, who has spent the majority of her career at the Department of Intellectual Property, began as an examiner more than 20 years ago and has since served as the Director of the Copyright Office, the Director of the Trademark Office, and most recently, the head of DIP's enforcement operations.

Thailand (Finally) Accedes to Patent Cooperation Treaty

¶5. (U) Alongkorn proudly described to Bae, Urban and emboffs his September 24 trip to Geneva to deposit Thailand's instrument of accession to the Patent Cooperation Treaty (PCT). The PCT is a mechanism for inventors to seek patent protection simultaneously by filing a single international patent application that can be used in all PCT signatory countries. The PCT also enables patent authorities to conduct an international patent search for documents that may affect the patentability of a particular invention. Thai and foreign patent owners have long sought Thailand's accession to the PCT as it saves the patent filers money and time when submitting their applications. Thailand's membership in the PCT will also greatly improve the ability of a Thai inventor to seek patent protection around the world. The Department of Intellectual Property plans to

BANGKOK 00002984 002.2 OF 003

open its PCT Receiving Office on December 24. USPTO provided assistance to help Thailand join the PCT and is in the process of determining the scope of future assistance.

¶6. (SBU) Alongkorn added, "The next step will be to accede to the Madrid Protocol." Similar to the PCT, the Madrid Protocol provides a mechanism for a trademark owner to seek protection in multiple countries by filing one application directly with the national trademark office. While Alongkorn noted the importance of Madrid, Thailand's potential accession will face domestic pressures from the legal community, as it may lead to a significant loss of revenue for the law firms who file trademarks for domestic and international owners.

Promotion and Protection Go Hand in Hand

¶7. (SBU) Alongkorn emphasized that the key to success of Thailand's "Creative Thailand" campaign (ref C) will be a stronger intellectual property regime. Prime Minister Abhisit Vejjajiva launched the government's Creative Thailand campaign on August 31 to promote the country's creative and innovative industries. Abhisit allocated approximately \$590 million from a recent stimulus package to support these projects over the next three years with the goal of boosting the economic contribution of Thailand's creative industries from the current 12 percent of GDP to 20 percent by 2012.

¶8. (SBU) Alongkorn remarked that while "promotion" is the focus of the Creative Thailand campaign, "protection" is the flipside of the coin. He elaborated on the government's six-month plan on the prevention and suppression of IPR violations, a plan approved by Cabinet in July (ref C). The plan focuses on six areas: law enforcement, judicial processes; patent registration process; internet piracy; legal amendments; and improved cooperation with the private sector. (NOTE: We will report septel about specific developments under each of these areas. END NOTE.)

¶9. (SBU) Alongkorn also highlighted that the latest Department of Intellectual Property data show an increase in enforcement operations in 2009. The Department of Intellectual Property has

since provided data that demonstrates between January and August the government made 5,521 arrests on IPR-related charges, a reported 40 percent increase over the same period in 2008. More than 4 million items were seized in raids over this same period, a reported 16 percent increase over 2008. Alongkorn presided over the destruction of more than 120 tons of these counterfeit and pirated goods in a ceremony on September 29. The goods, with an estimated street value of 621 million baht (approximately \$18 million), were seized in raids by the Royal Thai Police, the Customs Department, and the Department of Special Investigations. (COMMENT: The government's data indicating an increase in enforcement this year does not track with what we hear from U.S. rights holders and IP law firms. We will continue to review this data closely and will report septel on any developments. END COMMENT.)

Legal Improvements On Track

¶10. (SBU) Alongkorn described his proposed landlord liability amendments to the Copyright and Trademark Acts (ref C). The existing copyright and trademark laws only stipulate punishment for persons who manufacture, distribute, obtain for distribution, or import counterfeit products. Buyers and landlords are both overlooked. Alongkorn had hoped to push a buyer liability provision alongside the landlord liability amendment, but he has since given up after even the Prime Minister urged him to "review the issue more carefully." In early October, Abhisit returned the draft amendments to the Ministry of Commerce, stating that law enforcement should focus on the producers and distributors of pirated and counterfeit goods, rather than those who purchase the items on the streets.

¶11. (U) The landlord liability amendments will broaden the scope of punishable offences to include those who own or rent a building or space to support the manufacturing, storage, or sale of infringing goods. Alongkorn pointed out this provision could also be used to prosecute website owners who operate or provide e-commerce services for pirated goods. Under the most recent draft of the trademark amendments, the penalty for landlord-related offenses would be a fine ranging from 50,000 to 200,000 baht (approximately \$1,500 to

BANGKOK 00002984 003.2 OF 003

\$6,000). This penalty provision varies slightly under the copyright amendments, which impose fines between 30,000 and 300,000 baht (approximately \$900 to \$9,000). Alongkorn plans to resubmit the amendments to Cabinet within one month, after which drafts will be sent to the Council of State for additional scrutiny. The amendments could be presented to Parliament by early 2010.

Supportive of Anti-Camcording Law

¶12. (SBU) After several years of advocacy by USG and the Motion Picture Association of America, the Thai government now appears supportive of legislation that would criminalize the act of illegal camcording of films. Alongkorn told Bae that the Department of Intellectual Property would present a study on the anti-camcording laws of the U.S., Canada, and Hong Kong, as well as recommendations for a Thai law, at a seminar on November 23. (NOTE: We spoke with several attendees of the November 23 event who told us that, based on the study, the Ministry of Commerce now plans to draft a specific anti-camcording law that will be separate from the Copyright Act and other IP laws. END NOTE.)

¶13. (SBU) According to Motion Picture Association of America investigations, between January and August 2008, Thailand was reported to be the source of 32 illegal camcords of Hollywood films. However, over that same period in 2009, only one such case was reported. MPA remains concerned about the illegal capture of Thai language audio recordings at theaters in Thailand. These audio recordings are then combined with videos from other sources. In the first eight months of 2009, MPA noted 12 audio-only recordings of 11 Hollywood films in Thailand and on Thai internet sites. While the number of camcords of Hollywood titles appears to have dropped significantly, nearly 70 percent of all Thai film titles released between January and August of this year were reported to have been camcorded, packaged, sold in pirated goods markets in Thailand. MPAA

has joined arms with the Federation of National Film Association of Thailand which is also strongly advocating for an anti-camcording law.

PhRMA: Still No Seat the Table

¶14. (SBU) Rachel Bae expressed concern that the Pharmaceutical Research and Manufacturers of America (PhRMA) still does not have a meaningful dialogue with the government on pharmaceutical and health issues affecting their industry, despite some gestures in recent years. Alongkorn stated that the Prime Minister remains committed to a stronger dialogue with the pharmaceutical industry, but unfortunately, NGOs and many at the Ministry of Public Health "still have hostile views" toward PhRMA. He jokingly likened the process to the Six-Party Talks on North Korea, remarking that coordination with all the related agencies, NGOs, and industry groups is not an easy task. However, he agreed that the government needed to improve the consultative dialogue with PhRMA.

¶15. (U) This cable was cleared by USTR and EEB/IPE.

JOHN